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In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 562

THE QUECHAN TRIBE OF THE FORT YUMA RESERVATION, PETITIONER

v.

CLYDE F. THOMPSON, ET AL., AND ERNEST RISLING, ET AL., MEMBERS, AND AS THE REPRESENTATIVES OF, AND ON THE RELATION OF THE INDIANS OF CALIFORNIA AND THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The order of the Court of Claims (Pet. App. 1) is unreported. The opinion of the Indian Claims Commission (Pet. App. 4–10) is reported at 13 Ind. Cl. Comm. 89.

JURISDICTION

The judgment of the Court of Claims was entered on July 8, 1964 (Pet. App. 1). The petition for a writ of certiorari was filed on October 5, 1964. The jurisdiction of this Court is invoked under 28 U.S.C.

1255(1) and Section 20(c) of the Indian Claims Commission Act of 1946, 60 Stat. 1055, 25 U.S.C. 70s(c).

QUESTION PRESENTED

Whether the Indian Claims Commission and the Court of Claims correctly denied petitioner's petition to intervene on behalf of its members as a class in a suit wherein a stipulated judgment has been entered in favor of a different class.

STATUTE INVOLVED

The relevant sections of the Indian Claims Commission Act of 1946, 60 Stat. 1049, 25 U.S.C. 70, *et seq.*, provide:

> Section 2 (25 U.S.C. 70a):
>
> The Commission shall hear and determine the following claims against the United States on behalf of any Indian tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska: * * * (4) claims arising from the taking by the United States, whether as the result of a treaty of cession or otherwise, of lands owned or occupied by the claimant without the payment for such lands of compensation agreed to by the claimant; * * *
>
> Section 10 (25 U.S.C. 70i):
>
> Any claim within the provisions of this Act may be presented to the Commission by any member of an Indian tribe, band, or other identifiable group of Indians as the representative of all its members; but wherever any tribal organization exists, recognized by the Secretary

of the Interior as having authority to represent such tribe, band, or group, such organization shall be accorded the exclusive privilege of representing such Indians, unless fraud, collusion, or laches on the part of such organization be shown to the satisfaction of the Commission.

STATEMENT

In 1951, petitioner, the Quechan Tribe, filed a claim against the United States under the Indian Claims Commission Act to recover compensation for the taking of specific lands in California and Arizona. Other tribes filed thirteen similar suits with respect to California lands. In addition to these tribal actions, identical class actions (Nos. 31 and 37) were brought by Thompson and Risling ("respondents"), respectively, each purporting to represent the "Indians of California," a group comprising all persons enrolled under that designation pursuant to the Act of May 18, 1928, 45 Stat. 602.[1]

In 1952, the Court of Claims, reversing a decision of the Indian Claims Commission, held that the "Indians of California" were an "identifiable group of American Indians" within the meaning of Sections 2 and 10 of the Act (*supra*, p. 2), and that the Com-

[1] The 1928 Act, which is not directly involved here, was a special statute authorizing the attorney general of California to submit claims for compensation to the Court of Claims on behalf of the "Indians of California"—defined as "all Indians who were residing in the State of California on June 1, 1952, and their descendants now living in said State"—and providing for the establishment of rolls listing all members of that class.

mission therefore had jurisdiction to hear the claim brought by Thompson on their behalf. *Thompson* v. *United States*, 122 Ct. Cl. 348, certiorari denied, 344 U.S. 856.

In the ensuing proceedings before the Commission (the *Thompson* and *Risling* suits having been consolidated), the government and several tribal claimants (including the Quechan Tribe) challenged respondents' standing to represent all California Indians and, in the case of the tribes, insisted upon the right to prosecute their own separate claims. On January 20, 1958, the Commission ruled that respondents did not have the exclusive right to represent all Indians in California and that other claimants, including petitioner, were free to maintain their own suits. Chief Commissioner Witt in his separate opinion, implied that the class represented by respondents included only those Indians "whose tribal connections had been lost because of extinction of tribal identity or tribal organization * * *" (see Br. in Opp. of respondents Thompson and Risling, p. 17), while the two associate commissioners declared that the Indians of California "have no right to make claim" for the lands formerly held by the tribes which had sued on their own behalf (*id.* at 19).

In October 1958, the Commission ordered that California be divided into two zones: "Area A," including all lands claimed by the Quechans and the other tribal groups; and "Area B," to which respondents' class action was explicitly confined, comprising the rest of the State. The express purpose of this bifur-

cation was "to limit the land claim of * * * [respondents] to all that part of California not included in the claims of those tribes or groups that have filed cases for specific areas in the State" (6 Ind. Cl. Comm. 666, 671). While it was open at that time for all tribal groups to merge their claims with the class action, only three (the Yokiahs, Yanas, and Shastas) did so; the others, including petitioner, preferred to rely on their separate suits.

On July 31, 1959, the Commission held the United States liable to respondents for the value of the "Area B" lands (with certain exceptions) as of March 3, 1853.[2] 8 Ind. Cl. Comm. 1, 39. Both the United States and respondents appealed to the Court of Claims—the government challenging the order of liability, and respondents protesting the restriction of their class to non-tribal Indians claiming "Area B" lands.

On September 30, 1959, the Commission held the government liable to the Quechan Tribe for the value, as of 1853, of the specific lands claimed by them in "Area A."

Meanwhile, respondents and the government entered into negotiations looking to a settlement of the class action. The Mission and Pit River Indians, whose claims overlapped those of the "Indians of California," were permitted on that ground to consolidate their suits with respondents' class action for settlement purposes. At length the attorneys agreed

[2] The regular procedure of the Commission is to adjudicate liability and then later determine the amount of recovery.

upon the terms of a proposed settlement whereby a single judgment of $29,100,000 would be entered in the consolidated cases, subject to approval by the Indians concerned, the Secretary of the Interior and the Commission. The approval of the Indians was obtained at some twenty meetings held in various parts of California and, in some instances, by means of mail ballots, all supervised by the Secretary. The compromise thus accepted by the Indians pertained only to lands claimed by respondents in "Area B" and by the Mission and Pit River Indians; it did not involve any lands claimed by petitioner.

On November 19, 1963, while the settlement negotiations were still in progress, the Quechan Tribe filed a formal petition to intervene in the appeals then pending in the Court of Claims from the order of the Commission adjudicating the government's liability to respondents. The Tribe urged that its members belonged to the class which respondents represented and therefore were entitled to participate in the settlement. To resolve this question, the Court of Claims remanded the case to the Commission, which concluded on March 3, 1964, that the Quechan Tribe was not a proper party to respondent's suit. The Court of Claims, on July 8, 1964, affirmed the Commission and denied intervention. It is that decision which the Quechan Tribe asks this Court to review.

The proposed settlement, after its approval by the Indians, was presented to and approved by the Secretary of the Interior. On July 20, 1964, the Commission added its imprimatur, entering judgment for $29,100,000 (Pet. App. 11–12). Congress has appro-

priated funds for payment of the judgment and they have been deposited in the Treasury to await a plan of distribution.

ARGUMENT

Petitioner argues that it was entitled to intervene in the *Indians of California* case because its members belonged to the class represented by the respondents. That contention is groundless. The Indian Claims Commission ruled in its January 20, 1958, order and reiterated in its order of March 3, 1964 (Pet. App. 8), that respondents' representation extended only to those Indians who were not represented by a specific tribal entity in a separate suit. That conclusion was urged upon the Commission by petitioner itself (among others), which insisted upon the right to maintain a separate action on behalf of its own members and declined to consolidate that action with the *Indians of California* case while it was still before the Commission.

The decision below in no way affects petitioner's right to prosecute its own independent suit to recover the value of the specific lands it claims in "Area A." Whether members of the Quechan Tribe will obtain a larger per capita recovery through this avenue than they would as participants in the settlement is still a matter of conjecture and, in any event, is beside the point. Having voluntarily elected to sever their fortunes from those of the unaffiliated Indians and to pursue a separate remedy, they cannot reasonably complain of their exclusion from the settlement table. Enlargement of the settlement proceedings to include the Quechans and the many other claimant tribes

would have greatly complicated the negotiations and endangered the chances for agreement. And to permit the petitioner to intervene at this late date would require the cancellation of the settlement arrangement so laboriously arrived at—a settlement which took no account of the land claimed by the Quechans.

Nor does it aid petitioner that two other tribes, the Mission and Pit River, were permitted, with the consent of the parties, to consolidate their suits with the *Indians of California* case. Those tribes were admitted to the settlement solely because their claims overlapped and conflicted, in part, with those asserted by the respondents. No such consideration applied to the petitioner. And, in any event, as the Commission noted, "[t]he question as to which groups of claimants are to be included in compromise negotiations is between the parties involved and defendant. The reasons and merits for including or excluding certain groups is not an issue before us" (Pet. App. 9).

It is immaterial, moreover, that most members of the Quechan Tribe are listed on the rolls prepared by the Secretary of the Interior under the 1928 Act. Congress expressly stated (45 Stat. 602, § 1) that the definition of "Indians of California" contained in that statute, and consequently the rolls set up to identify such Indians, were "for the purposes of this Act"; they have no relevance to suits under the Indian Claims Commission Act. It is conceivable that those rolls may be utilized in determining the persons to whom the distribution of the $29,100,000 judgment should be made. But the distribution of funds ap-

propriated for the payment of Indian Claims Commission awards is subject to the direction of Congress, not the Commission, and is not presently before this Court. See Sections 21, 22 of the Indian Claims Commission Act of August 13, 1946, 60 Stat. 1055, 25 U.S.C. 70t, 70u; *Minnesota Chippewa Tribe* v. *United States*, 315 F. 2d 906, 914, fn. 11 (Ct. Cl.). Thus, as the Commission noted, "[a]ny question as to how the 1928 Act enrollment or any other enrollments might be utilized in effecting any distribution of an award is beyond our jurisdiction and responsibility" (Pet. App. 9).

The issue presented has no general importance and there is no conflict. Further review, therefore, is unwarranted.

CONCLUSION

For the reasons given, we respectfully submit that the petition for a writ of certiorari should be denied.

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Solicitor General.

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Attorney.

DECEMBER 1964.

U.S. GOVERNMENT PRINTING OFFICE: 1964